IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 833 of 2007
With
CRIMINAL MISC.APPLICATION No. 834 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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NATUBHAI M. PANCHAL & 1 - Applicant(s)
Versus
STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :
MR NILESH A PANDYA for Applicant(s) : 1 - 2.
MR KT DAVE, ADDL. PUBLIC PROSECUTOR for Respondent(s): 1,
RULE SERVED for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 26/09/2007

ORAL JUDGMENT

1. As common question of law and facts arise in these applications, they are being disposed of by this common judgment.

2. Criminal Misc.Application No.833 of 2007 has been filed by the petitioners – original accused for an appropriate order to quash and set aside Criminal Case No. 3981 of 1999 filed by respondent No.2 against the petitioner pending in the Court of learned Chief Judicial Magistrate, Vadodara.

Criminal Misc.Application No. 834 of 2007 has been filed by the petitioners – original accused for an appropriate order to quash and set aside Criminal Case No. 3646 of 1999 filed by respondent No.2 against the petitioners pending in the Court of learned Chief Judicial Magistrate, Vadodara.

3. Both the aforesaid criminal complaints are filed by respondent No.2 in the Court of learned Chief Judicial Magistrate, Vadodara against the respective petitioners for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act ('NIAct' for short)

alleging inter-alia that cheques which were issued by the original accused No.1 have been returned with an endorsement 'exceed arrangements'. Thereafter, statutory demand notices were served upon the petitioners, still after stipulated time of show cause notice, amount has not been paid and therefore, aforesaid criminal complaints are filed and the learned chief Judicial Magistrate, Vadodara has issued summons in the said cases. Therefore, the petitioners have preferred the present applications under Section 482 of the Cr.P.C. to quash and set aside the aforesaid complaints.

4. Mr.Nilesh Pandya, learned Advocate appearing on behalf of the petitioners – original accused has submitted that there were no legal dues and blank cheques have been misused by the original complainant and even cheques in question are not signed by the accused and; that blank cheques were stolen by the complainant. It is submitted that as such there were no transactions between the petitioners and the complainant. Therefore, with mala-fide intention impugned complaints are filed. It is submitted that

therefore, the petitioners have not committed any offence under Section 138 of the N.I.Act and therefore, to continue criminal proceedings would be abuse of process of Court and unnecessary harassment to the petitioners. It is also further submitted that the petitioners are joined as Directors of the Company and therefore, so far as petitioner No.1 is concerned, he was only Administrative Director of the Company and he has no concern with the financial aspects of the Company. It is further submitted that so far as petitioner No.2 is concerned, he has not signed cheque and therefore, the complaint in question is not maintainable and same requires to be quashed and set aside. It is submitted that if the Directors had no concern with the concern, they cannot be saddled with the liability for the offence punishable under Section 138 of the N.I.Act. Therefore, it is requested to quash the impugned complaint.

5. Both the applications are opposed by Mr.K.T.Dave, learned APP by submitting that whatever submission made on behalf of the petitioners are all

their defences which are required to be considered at the time of trial on leading proper evidence and impugned complaints are not required to be quashed in exercise of powers under Section 482 of the Cr.P.C. Therefore, it is requested to dismiss the present applications by submitting that on bare reading of the impugned complaints, all the ingredients of making out a case under Section 138 of the NI Act are satisfied

6. Heard the learned Advocates appearing on behalf of the respective parties.

7. At the outset, it is required to be noted that on bare reading of the impugned complaints, it prima-facie discloses offence under Section 138 of the NIAct and all the ingredients making out a case under Section 138 of the NI Act are fulfilled. Now the submission on behalf of the learned Advocate appearing on behalf of the petitioners that there were no legal dues as there were no transactions between the petitioners and the complaint and; that blank cheques were stolen by the complainant; even signature on the cheques are of the complainant; all

these are defences of the petitioners which are required to be considered at the time of trial on leading proper evidence and on that ground impugned complaints are not required to be quashed and set aside in exercise of powers under Section 482 of the Cr.P.C.

So far as the contention on behalf of the petitioners that they were not in charge of the Company and/or day to day affairs of the Company and they had no concern with the financial transactions is concerned, there are sufficient averments in the complaint against the petitioners. Whatever submissions made on behalf of the petitioners as stated herein above are required to be considered and dealt with at the time of trial on leading proper evidence and as held by the Hon'ble Supreme Court in the case of ***N.Ranjachari V/s. Bharat Sanchar Nigam Ltd.*** reported in ***AIR 2007 SC 1682***, aforesaid aspects are required to be adjudicated at the time of trial and on that ground impugned complaints are not required to be qushed and set aside in exercise of powers under Section 482 of the Cr.P.C.

8. For the reasons stated above, the applications require dismissal and accordingly they are dismissed. Rule discharged. Ad-interim relief, if any, stands vacated forthwith.

[M.R.Shah, J.]

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